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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/524,189

09/15/2005

Dirk Andre Richard Vanden Berghe

5100-000012/US

1535

30593

7590

04/28/2009

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EXAMINER

SASAN, ARADHANA

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

04/28/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/524,189	Applicant(s) VANDEN BERGHE, DIRK ANDRE RICHARD	
	Examiner ARADHANA SASAN	Art Unit 1615	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments (filed 04/15/09) have been fully considered but are not found persuasive.

Applicant argues that Bronder is not concerned with an extrusion process as recited in claim 1.

This is not persuasive because the primary reference, Vanden Berghe, teaches a method of preparing a silicic acid extrusion. Bronder is combined with Vanden Berghe because both references are concerned with the stabilization of silicic acid preparations.

Applicant argues that one skilled in the art would recognize that the "stabilizing agents" of Bronder are solid compounds, and not liquid between -10 and 40°C, as the solvent agents defined in Vanden Berghe. Applicant filed the MSDS for choline chloride as an affidavit on 04/15/09 to show that choline chloride is in a solid state.

This is not persuasive because the instant specification discloses that: "choline chloride is treated with dry hydrochloric acid. Silicon tetrachloride is added to the formed choline solution ..." (PG Pub US 20060099276 A1, [0017]). Therefore, a solution of choline chloride is "formed". Bronder clearly teaches the use of choline (among other quaternary ammonium compounds) as a stabilizing agent for orthosilicic acid and "forming the solution for the ortho silicic acid" (Col. 1, line 59 to Col. 2, line 6). Bronder also teaches that "if choline is used as stabilizing agent it can be converted to choline hydrochloride using dry hydrochloric acid" (Col. 2, lines 19-20). Therefore, the limitation of choline is taught by Bronder, along with the "forming" of the solution for the ortho silicic acid by treating choline with hydrochloric acid (as disclosed in the instant specification).

Applicant argues that an attempt to bring in the isolated teachings of the compound of Bronder into the method of preparing a silicic acid extrudate of Vanden Berghe would amount to improperly picking and choosing from the different references without regard for the teachings of the references as a whole.

This is not persuasive because both Bronder and Vanden Berghe are concerned with the stabilization of silicic acid preparations. Use of a known technique to improve similar methods in the same way is obvious. Please see MPEP 2141.

/Aradhana Sasan/
Examiner, Art Unit 1615

/MP WOODWARD/
Supervisory Patent Examiner, Art Unit 1615